

To: Bar NND Ranches, LLC (info@Peacocklaw.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77928601 - UNGULATTE - 32286-1001
Sent: 9/11/2013 10:51:30 AM
Sent As: ECOM117@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)
[Attachment - 12](#)
[Attachment - 13](#)
[Attachment - 14](#)
[Attachment - 15](#)
[Attachment - 16](#)

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 77928601

MARK: UNGULATTE

77928601

CORRESPONDENT ADDRESS:

JUSTIN R. JACKSON

PEACOCK MYERS, P. C.

PO BOX 26927

ALBUQUERQUE, NM 87125-6927

CLICK HERE TO RESPOND TO THIS LETTER

http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Bar NND Ranches, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO :

32286-1001

CORRESPONDENT E-MAIL ADDRESS:

info@Peacocklaw.com

OFFICE ACTION

ISSUE/MAILING DATE: 9/11/2013

THIS IS A NEW AND SUBSEQUENT FINAL ACTION.

This Office action is in response to applicant's communication filed on June 20, 2013.

Registration was finally refused because the drawing does not match the mark on the specimen. Applicant has responded by 1) amending the drawing back to the drawing originally submitted with the application, 2) amending the mark description, and 3) arguing that the specimen should be accepted.

The drawing and description of the mark are unacceptable. Thus, the previously issued requirements related thereto must be reinstated and made final. Similarly, although applicant's arguments were carefully considered, the specimen remains unacceptable.

The requirement for an acceptable drawing, requirement for acceptable description of the mark, and

specimen refusal are now made FINAL for the reasons set forth below. *See* Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.56(a), 2.64(a), 2.88(b)(2); TMEP §§807, 904, 1109.09(b).

Drawing

Background Drawing Information:

A drawing must be limited to the applied for mark. TMEP §807.02. Additionally, a special form drawing must show the mark (1) in black on a white background, if color is not a feature of the mark, or (2) in color on a white background, if color is a feature of the mark. 37 C.F.R. §2.52(b); *see* TMEP §807.04. In addition, the mark must be shown clearly so as to produce a high quality image when copied; all lines in the drawing must be clean, sharp, solid, and not fine or crowded. *See* 37 C.F.R. §§2.52, 2.53(c), 2.54(e); TMEP §807.04(a).

For marks consisting of a configuration of the goods or their packaging or a specific design feature of the goods or packaging, the drawing must depict a single three-dimensional view of the goods or packaging, showing in solid lines those features that applicant claims as its mark. *See* 37 C.F.R. §2.52(b)(2); TMEP §§807.10, 1202.02(c)(iv); *In re Minn. Mining & Mfg. Co.*, 335 F.2d 836, 839, 142 USPQ 366, 368-69 (C.C.P.A. 1964). *For these cases*, if the drawing of the mark includes additional matter not claimed as part of the mark (e.g., matter that shows the position or placement of the mark), applicant must depict such matter using broken or dotted lines. 37 C.F.R. §2.52(b)(4); *In re Famous Foods, Inc.*, 217 USPQ 177, 177 (TTAB 1983); TMEP §§807.08, 1202.02(c)(i); *see In re Water Gremlin Co.*, 208 USPQ 89, 91 (C.C.P.A. 1980).

Applicant's Drawing:

In this case, applicant has submitted a special form drawing of a deer design. Included on the drawing page are antlers on the deer's head, which are shown in broken lines and which applicant has indicated are not claimed as a feature of the mark. The mark in this case is not a configuration of the goods or their packaging nor is it a design feature of the goods or their packaging. Moreover, the use of dotted lines to show placement does not appear necessary for any other reason. Thus, applicant's drawing must conform to the standard drawing requirements including those that require the drawing to be limited only to the applied-for mark and shown in solid lines.

Applicant's Argument:

Applicant argues that 37 C.F.R. §2.52(b)(4) "mandates" that it use dotted lines to show matter not claimed as part of the mark. The examining attorney respectfully disagrees. 37 C.F.R. §2.52(b)(4) says:

Broken lines to show placement. If necessary to adequately depict the commercial impression of the mark, the applicant may be required to submit a drawing that shows the placement of the mark by surrounding the mark with a proportionately accurate broken-line representation of the particular goods, packaging, or advertising on which the mark appears. The applicant must also use broken lines to show any other matter not claimed as part of the mark. For any drawing using broken lines to indicate placement of the mark, or matter not claimed as part of the mark, the applicant must describe the mark and explain the purpose of the broken lines.

Even assuming *arguendo* that dotted lines identifying “non-claimed” matter were generally considered “necessary” in connection with *some* non-configuration, special form drawings, such dotted lines are completely *unnecessary in this case*. Applicant’s mark is a legible, two-dimensional design mark. The outline of the antlers do not aid in showing position of the mark on the packaging, product, etc. Moreover, applicant itself has argued in its response that 1) the applied-for mark is the design of the deer without antlers, and 2) the deer creates a completely separate commercial impression apart from any antlers that may be used with it. The dotted lines showing antlers are, therefore, *unnecessary to depict the commercial impression of applicant’s mark*.

On the other hand, it is noted that applicant has confirmed in its response (and in its specimen) that it, in fact, actually uses a mark that shows the deer with antlers. As noted below, applicant may amend the drawing to include antlers (in solid lines) and conform to the mark on the bag of coffee shown in the specimen. Such an amendment would not constitute an impermissible material alteration of the original drawing. *See* 37 C.F.R. §2.72(a)(2), (b)(2); *see* TMEP §§807.12(a), 807.14 *et seq.*

Conclusion:

An acceptable drawing of the mark is, therefore, required.

Description of the Mark

Applications for marks not in standard characters must include an accurate and concise description of the entire mark that identifies literal elements as well as any design elements. *See* 37 C.F.R. §2.37; TMEP §§808.02, 808.03(d). As discussed above, the amended drawing cannot be accepted. The amended description of the mark is, therefore, unacceptable. Moreover, the amended description of mark requires a bit of clarification as periods, rather than a series of semi-colons, should be used to separate a series of complete sentences.

Therefore, applicant must provide a more accurate description of the applied-for mark. Assuming the previously accepted drawing is reinstated or applicant submits a new drawing showing the deer mark on the specimen (with antlers), the following is suggested:

The mark consists of the design of a fanciful deer holding a coffee mug, which has the word "UNGULATTE" thereon.

Specimen

Refusal:

A statement of use must include a specimen showing the applied-for mark in use in commerce for each class of goods and/or services specified in the statement of use. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.56(a), 2.88(b)(2); TMEP §§904, 1109.09(b). The mark on the drawing must be a substantially exact representation of the mark as used on the specimen. 37 C.F.R. §2.51(b); TMEP §807.12(a); *see* 37 C.F.R. §2.72(b)(1). In addition, the drawing of the mark can be amended only if the amendment does not materially alter the mark as originally filed. 37 C.F.R. §2.72(a)(2), (b)(2); *see* TMEP §§807.12(a), 807.14 *et seq.*

In this case, the mark on the specimen disagrees with the mark on the drawing. In this regard, the antlers outlined in the drawing are not claimed as part of the mark. Thus, the proposed amended drawing/mark is a deer design without antlers. Significantly, the design of the deer without antlers (nor with dotted lines representing antlers) was the previously accepted drawing.

In any case, neither the newly proposed drawing nor the previously accepted drawing match the mark on the specimen. In this regard, the drawing and the mark on the specimen are the same, except that the deer shown in the drawing has no antlers. The deer in the mark on the specimen, however, has prominent antlers. The antlers are very large, and they visually take up almost as much space as the rest of the deer and its coffee mug combined. Moreover, the deer's antlers are attached to the deer's head and mixed in with the hair on the deer's head. Thus, the antlers flow straight into the deer's head, and the antlers, head, and body of the deer create a single, continuous, inseparable design.

In light of the foregoing, it is clear that neither the proposed drawing nor the previously accepted drawing match the mark on the specimen. Therefore, registration is again FINALLY refused because the specimen does not show the applied-for mark in use in commerce as a trademark and/or service mark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.56(a), 2.88(b)(2); TMEP §§904, 904.07(a).

Applicant's Arguments:

Applicant argues that the drawing matches the mark on the specimen because the antlers in the mark on the specimen are a separable element, and the antlers and the deer design do not form a unitary mark. The examining attorney respectfully disagrees.

In this case, the antlers shown on the deer in the mark on the specimen are very large and prominent. In fact, they visually take up almost as much space as the rest of the deer and the coffee mug combined. Moreover, the deer's antlers are attached to the deer's head and mixed in with the hair on the deer's head. Thus, the antlers flow straight into the rest of the deer's body and create a single, continuous, inseparable design.

To say the antlers are separable would be akin to saying that legs that are attached to the trunk of a body or ears that are attached to a head in marks depicting a human are separable. Body parts work together in real life. Legs move the whole body. Ears are attached to the head and take information in, which is transmitted to the brain in the head. Attached body parts, whether human or animal, simply create the impression of a single whole.

With respect to the deer in the mark on the specimen, the attached photos establish that antlers are attached to deer and deer use the antlers along with their whole body, particularly when fighting. Thus, consumers will perceive the mark on the specimen to be a unitary, inseparable whole. This is not a case where there is any visual separation or space between the antlers and the rest of the deer shown in the mark on the specimen.

Finally, it is noted that the antlers in the mark on the specimen are similar in color to the rest of the deer. The color continuity and the fact that the antlers are integrated with the rest of the deer causes the antlers and rest of the deer to be perceived as a continuous, inseparable, and unitary design.

Action Required:

Therefore, applicant must submit one of the following:

(1) A new drawing of the mark that agrees with the mark on the specimen but does not materially alter the original mark. *See* 37 C.F.R. §2.72(b); TMEP §§807.13(a), 807.14 *et seq.* Amending the drawing to agree with the specimen would not be considered a material alteration of the mark in this case.; or

(2) A substitute specimen showing use in commerce of the mark on the drawing, and the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“The substitute specimen was in use in commerce prior to the expiration of the deadline for filing the statement of use.”** *See* 37 C.F.R. §§2.59(b)(2), 2.193(e)(1); TMEP §§807.12(a), 904.05. If submitting a specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

Applicant may not withdraw the statement of use. 37 C.F.R. §2.88(g); TMEP §1109.17.

Specimen Response Advisory:

Applicant may respond to the stated specimen refusal by submitting a verified substitute specimen by following the suggested directions below for responding either online or by mail.

If applicant responds to this Office action online via the Trademark Electronic Application System (TEAS), applicant should provide a substitute specimen as follows: (1) answer “yes” to the TEAS response form wizard question to “submit a new or substitute specimen;” (2) attach a jpg or pdf file of the substitute specimen; (3) select the statement that “**The substitute specimen(s) was in use in commerce prior to the expiration of the deadline for filing the statement of use.**”; and (4) sign personally or enter personally his/her electronic signature, name in printed or typed form, and date after the declaration at the end of the TEAS response form. *See* 37 C.F.R. §§2.59(b)(2), 2.193(a), (c)-(d), (e)(1); TMEP §§611.01(c), 804.01(b). Please note that these steps appear on different pages of the TEAS response form.

If applicant experiences difficulty in submitting the required substitute specimen, supporting statement and/or declaration, please e-mail TEAS@uspto.gov for technical assistance regarding the TEAS response form.

If applicant responds to this Office action on paper, via regular mail, applicant may provide a verified substitute specimen by (1) personally signing, dating, and printing or typing the name of the signatory in the declaration below; and (2) submitting a substitute specimen showing the applied-for mark in use in commerce. *See* 37 C.F.R. §§2.20, 2.59(b)(2), 2.193(a)(1), (d), (e)(1); TMEP §§611.01(b), 804.01(b), 904.05.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that ***the substitute specimen was in use in commerce prior to the expiration of the deadline for filing the statement of use***; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

****The refusal(s) and/or requirement(s) above are made FINAL.****

Advisory

In light of the foregoing, please note that the previously filed appeal will continue with the Trademark Trial and Appeal Board. *See* 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.6(a)(18); TBMP ch. 1200. Please note that when proceedings with respect to the appeal are resumed, the Board will take any necessary action with regard to any additional grounds for refusal contained in this new/subsequent final Office action. *See* TBMP §1209.01; TMEP §715.04(b).

Please do not hesitate to contact the undersigned with any questions.

/MaureenDallLott/

Maureen Dall Lott

Trademark Examining Attorney, Law Office 117

United States Patent and Trademark Office

571-272-9714

maureen.lott@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint

applicants). If an applicant is represented by an attorney, the attorney must sign the response.

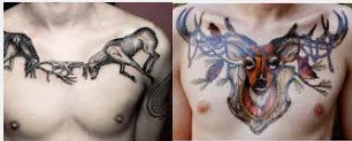




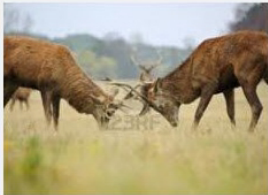





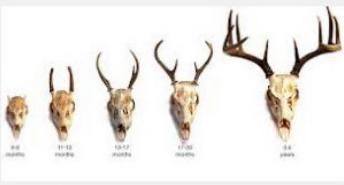



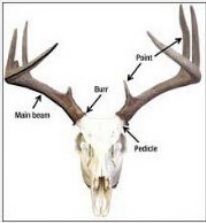

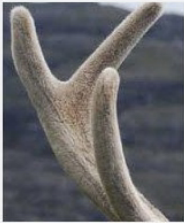
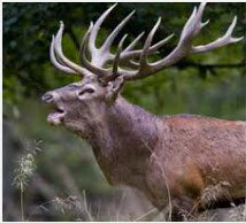
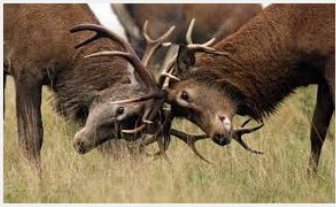
PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

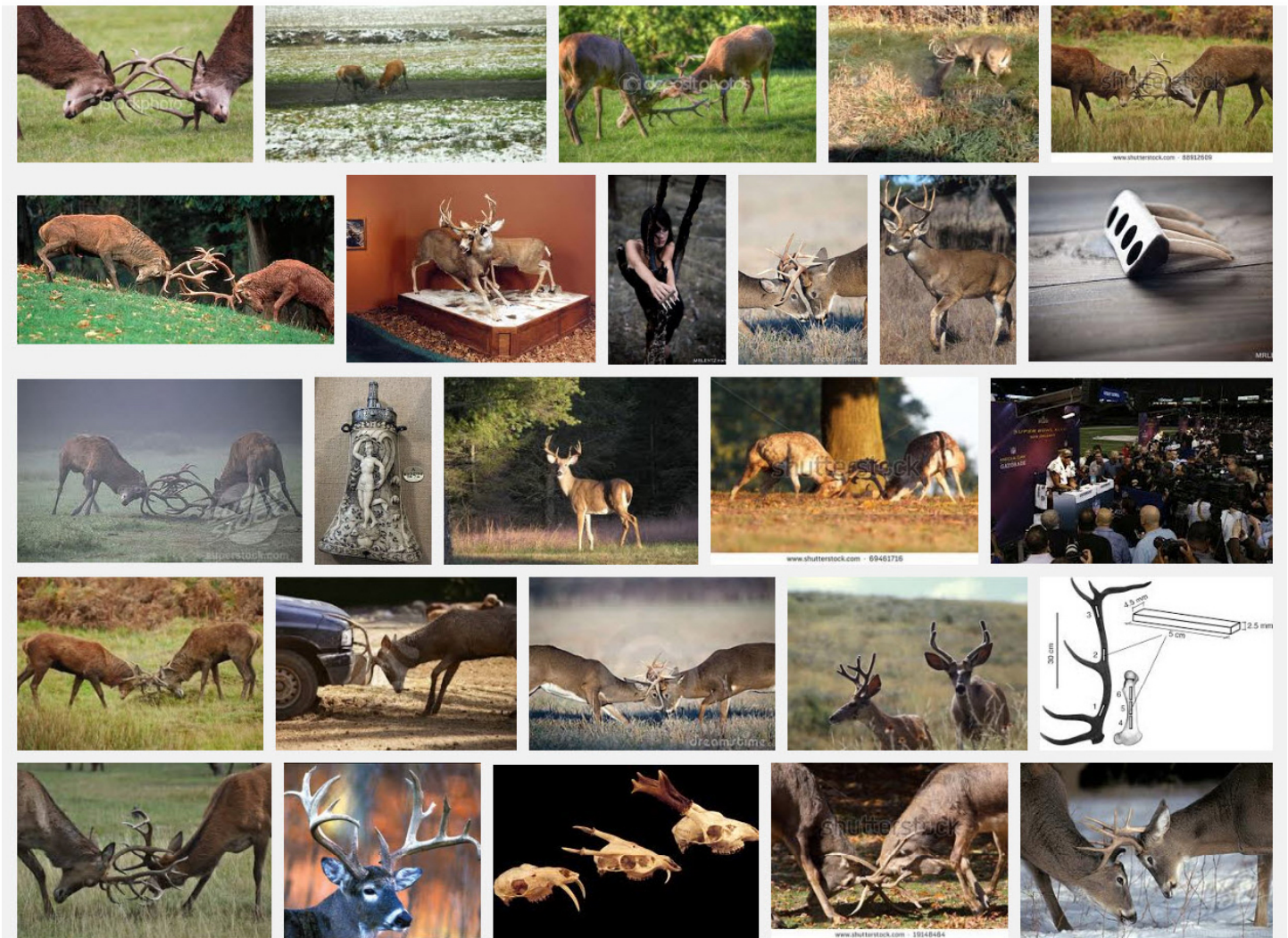
TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Search **Images** Maps Play YouTube News Gmail Drive More Sign in

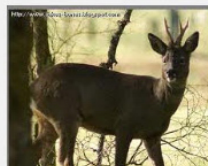
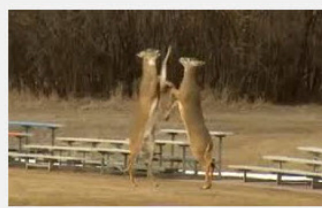
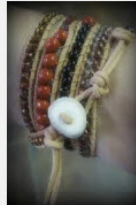
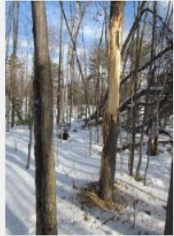
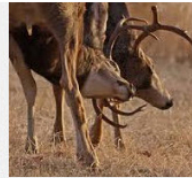
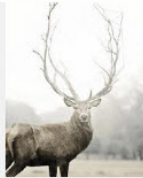
Google deer antlers fighting

Web **Images** Maps Shopping More Search tools Safe Search

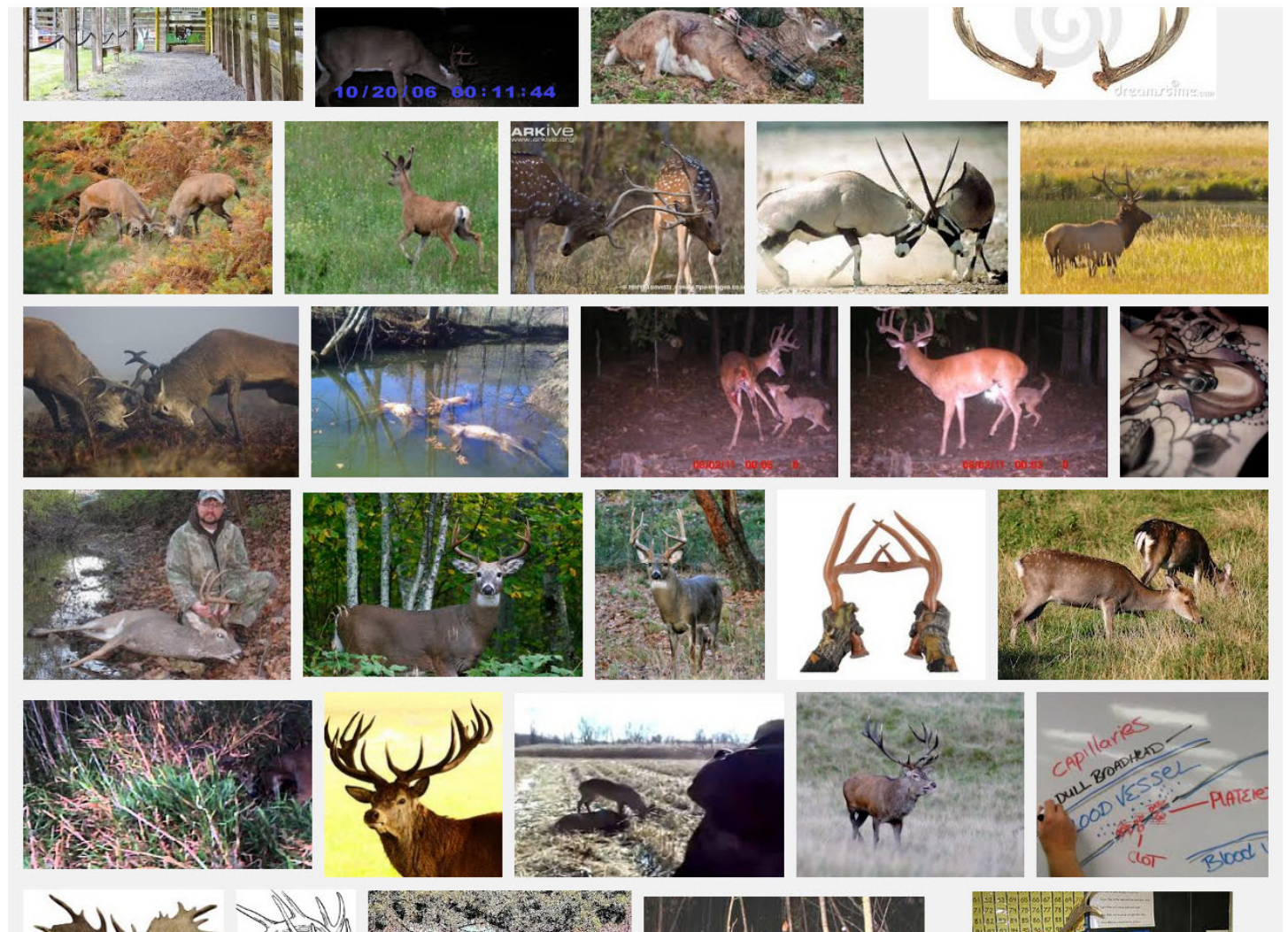


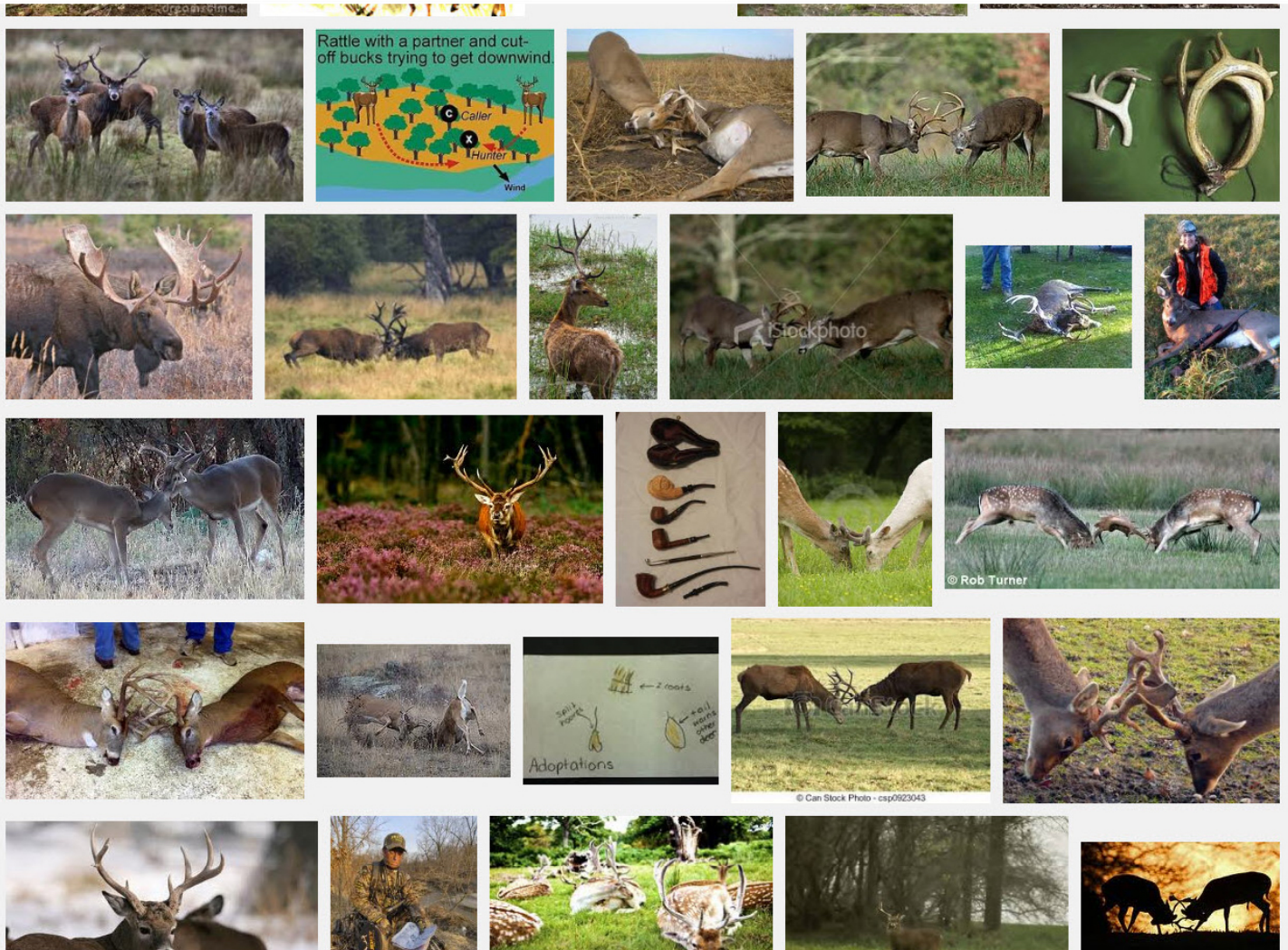


[illegible]



[illegible]

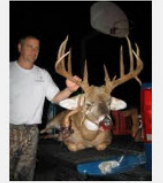




EXTREME HEAT

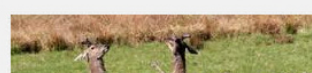
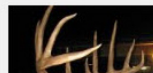
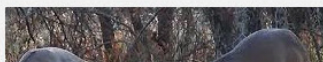
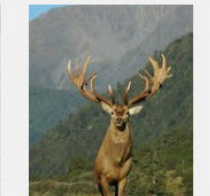
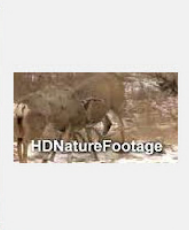
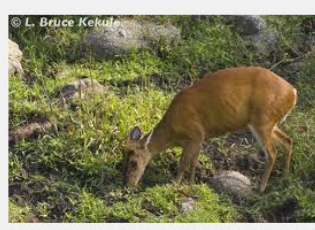
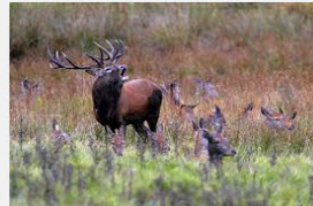
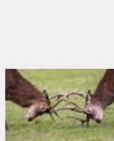
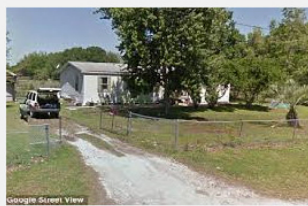
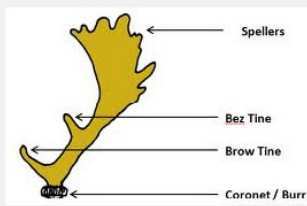
Cu <small>copper</small>	Zn <small>zinc</small>	Ga <small>gallium</small>
Fk Funkym 145	Gv Groovium 709	Ax Austexium 787
Ag <small>silver</small> 107.86	Cd <small>cadmium</small> 112.41	In <small>indium</small> 114.81

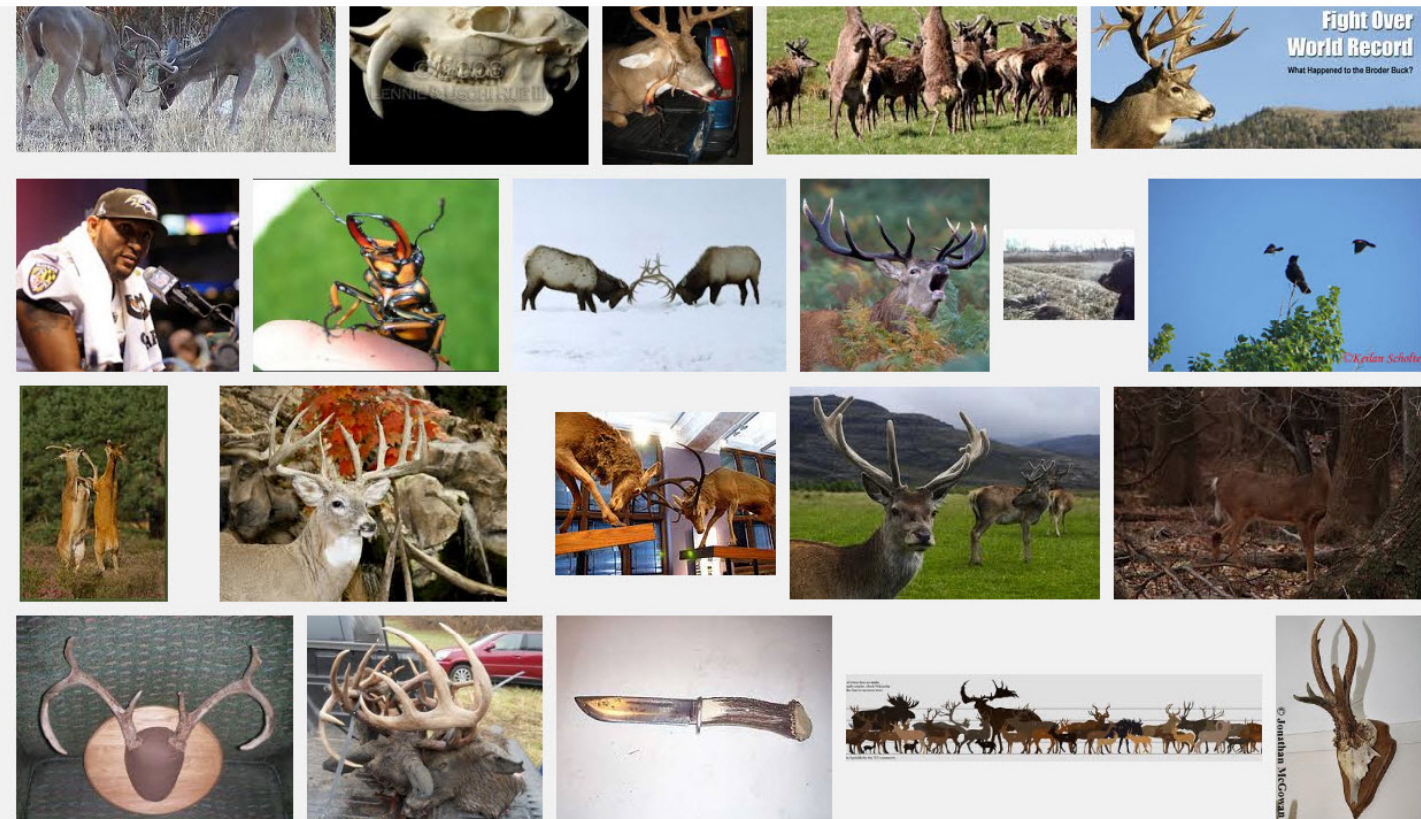
Put Some Weight On It!!



[illegible]

[illegible]





Show more results

To: Bar NND Ranches, LLC (info@Peacocklaw.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77928601 - UNGULATTE - 32286-1001
Sent: 9/11/2013 10:51:31 AM
Sent As: ECOM117@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **9/11/2013** FOR U.S. APPLICATION SERIAL NO. 77928601

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **9/11/2013** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at

http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.